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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 **Charline Espinoza,**

11 Plaintiff,

12 v.

13 **Hennessey's Tavern, Inc., dba HT**  
14 **Grill;** and Does 1-10,

15 Defendants.  
16

Case No. 2:15-cv-00332-CAS-JEM

**DISCOVERY MATTER**

**[Proposed] Protective Order**

17  
18 By agreement of the parties hereto, pursuant to the Joint Stipulation filed  
19 concurrently herewith, and for good cause shown, it is hereby ORDERED:

20  
21 1. A. PURPOSES AND LIMITATIONS  
22

23 Discovery in this action is likely to involve production of confidential,  
24 proprietary, or private information for which special protection from public  
25 disclosure and from use for any purpose other than prosecuting this litigation may  
26 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
27 enter the following Stipulated Protective Order. The parties acknowledge that this  
28 Order does not confer blanket protections on all disclosures or responses to

1 discovery and that the protection it affords from public disclosure and use extends  
2 only to the limited information or items that are entitled to confidential treatment  
3 under the applicable legal principles. The parties further acknowledge, as set forth  
4 in Section 12.3, below, that this Stipulated Protective Order does not entitle them  
5 to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
6 procedures that must be followed and the standards that will be applied when a  
7 party seeks permission from the court to file material under seal.

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9 **B. GOOD CAUSE STATEMENT**

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11 This action is likely to involve information regarding or relating to the  
12 medical condition or ability of Plaintiff Charline Espinoza; information produced  
13 in discovery from sources that consider the information confidential information.  
14 Special protection from public disclosure and from use for any purpose other than  
15 prosecution of this action is warranted. Such confidential materials and  
16 information consist of, among other things, medical records, summaries and  
17 information, and information otherwise generally unavailable to the public, or  
18 which may be privileged or otherwise protected from disclosure under state or  
19 federal statutes, court rules, case decisions, or common law. Accordingly, to  
20 expedite the flow of information, to facilitate the prompt resolution of disputes  
21 over confidentiality of discovery materials, to adequately protect information the  
22 parties are entitled to keep confidential, to ensure that the parties are permitted  
23 reasonable necessary uses of such material in preparation for and in the conduct of  
24 trial, to address their handling at the end of the litigation, and serve the ends of  
25 justice, a protective order for such information is justified in this matter. It is the  
26 intent of the parties that information will not be designated as confidential for  
27 tactical reasons and that nothing be so designated without a good faith belief that it  
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1 has been maintained in a confidential, non-public manner, and there is good cause  
2 why it should not be part of the public record of this case.

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5 2. DEFINITIONS

6 2.1 Action: the federal lawsuit filed by Plaintiff Charline Espinoza  
7 against Hennessey's Tavern, Inc., dba HT Grill on January 15, 2015 in the Central  
8 District of California and reflecting case number 2:15-cv-00332-CAS-JEM.

9 2.2 Challenging Party: a Party or Non-Party that challenges the  
10 designation of information or items under this Order.

11 2.3 "CONFIDENTIAL" Information or Items: information (regardless  
12 of how it is generated, stored or maintained) or tangible things that qualify for  
13 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
14 the Good Cause Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
16 their support staff).

17 2.5 Designating Party: a Party or Non-Party that designates information  
18 or items that it produces in disclosures or in responses to discovery as  
19 "CONFIDENTIAL."

20 2.6 Disclosure or Discovery Material: all items or information,  
21 regardless of the medium or manner in which it is generated, stored, or maintained  
22 (including, among other things, testimony, transcripts, and tangible things), that  
23 are produced or generated in disclosures or responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a  
25 matter pertinent to the litigation who has been retained by a Party or its counsel to  
26 serve as an expert witness or as a consultant in this Action.

1           2.8    House Counsel: attorneys who are employees of a party to this  
2 Action. House Counsel does not include Outside Counsel of Record or any other  
3 outside counsel.

4           2.9    Non-Party: any natural person, partnership, corporation, association,  
5 or other legal entity not named as a Party to this action.

6           2.10   Outside Counsel of Record: attorneys who are not employees of a  
7 party to this Action but are retained to represent or advise a party to this Action  
8 and have appeared in this Action on behalf of that party or are affiliated with a law  
9 firm which has appeared on behalf of that party, and includes support staff.

10          2.11   Party: any party to this Action, including all of its officers, directors,  
11 employees, consultants, retained experts, and Outside Counsel of Record (and  
12 their support staffs).

13          2.12   Producing Party: a Party or Non-Party that produces Disclosure or  
14 Discovery Material in this Action.

15          2.13   Professional Vendors: persons or entities that provide litigation  
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits  
17 or demonstrations, and organizing, storing, or retrieving data in any form or  
18 medium) and their employees and subcontractors.

19          2.14   Protected Material: any Disclosure or Discovery Material that is  
20 designated as "CONFIDENTIAL."

21          2.15   Receiving Party: a Party that receives Disclosure or Discovery  
22 Material from a Producing Party.

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25    3.    SCOPE

26           The protections conferred by this Stipulation and Order cover not only  
27 Protected Material (as defined above), but also (1) any information copied or  
28 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or  
2 presentations by Parties or their Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the  
4 trial judge. This Order does not govern the use of Protected Material at trial.

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7 **4. DURATION**

8 Once a case proceeds to trial, all of the information that was designated as  
9 confidential or maintained pursuant to this protective order becomes public and  
10 will be presumptively available to all members of the public, including the press,  
11 unless compelling reasons supported by specific factual findings to proceed  
12 otherwise are made to the trial judge in advance of the trial. See Kamakana v. City  
13 and County of Honolulu, 447 F.3d 1172, 1180-81 (9<sup>th</sup> Cir. 2006) (distinguishing  
14 “good cause” showing for sealing documents produced in discovery from  
15 “compelling reasons” standard when merits-related documents are part of court  
16 record). Accordingly, the terms of this protective order do not extend beyond the  
17 commencement of the trial.

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20 **5. DESIGNATING PROTECTED MATERIAL**

21 **5.1 Exercise of Restraint and Care in Designating Material for**  
22 **Protection**. Each Party or Non-Party that designates information or items for  
23 protection under this Order must take care to limit any such designation to specific  
24 material that qualifies under the appropriate standards. The Designating Party  
25 must designate for protection only those parts of material, documents, items, or  
26 oral or written communications that qualify so that other portions of the material,  
27 documents, items, or communications for which protection is not warranted are  
28 not swept unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited.  
2 Designations that are shown to be clearly unjustified or that have been made for an  
3 improper purpose (e.g., to unnecessarily encumber the case development process  
4 or to impose unnecessary expenses and burdens on other parties) may expose the  
5 Designating Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that  
7 it designated for protection do not qualify for protection, that Designating Party  
8 must promptly notify all other Parties that it is withdrawing the inapplicable  
9 designation.

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11 5.2 Manner and Timing of Designations. Except as otherwise provided  
12 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for  
14 protection under this Order must be clearly so designated before the material is  
15 disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic  
18 documents, but excluding transcripts of depositions or other pretrial or trial  
19 proceedings), that the Producing Party affix at a minimum, the legend  
20 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
21 contains protected material. If only a portion or portions of the material on a page  
22 qualifies for protection, the Producing Party also must clearly identify the  
23 protected portion(s) (e.g., by making appropriate markings in the margins).

24 A Party or Non-Party that makes original documents available for  
25 inspection need not designate them for protection until after the inspecting Party  
26 has indicated which documents it would like copied and produced. During the  
27 inspection and before the designation, all of the material made available for  
28 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has

1 identified the documents it wants copied and produced, the Producing Party must  
2 determine which documents, or portions thereof, qualify for protection under this  
3 order. then, before producing the specified documents, the Producing Party must  
4 affix the “CONFIDENTIAL legend” to each page that contains Protected  
5 Material. If only a portion or portions of the material on a page qualifies for  
6 protection, the Producing Party also must clearly identify the protected portion(s)  
7 (e.g., by making appropriate markings in the margins).

8 (b) for testimony given in depositions that the Designating Party  
9 identify the Disclosure or Discovery Material on the record, before the close of the  
10 deposition all protected testimony.

11 (c) for information produced in some form other than documentary  
12 and for any other tangible items, that the Producing Party affix in a prominent  
13 place on the exterior of the container or containers in which the information is  
14 stored the legend “CONFIDENTIAL.” If only a portion or portions of the  
15 information warrants protection, the Producing Party, to the extent practicable,  
16 shall identify the protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
18 failure to designate qualified information or items does not, standing alone, waive  
19 the Designating Party’s right to secure protection under this Order for such  
20 material. Upon timely correction of a designation, the Receiving Party must make  
21 reasonable efforts to assure that the material is treated in accordance with the  
22 provisions of this Order.

## 23 24 25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
27 designation of confidentiality at any time that is consistent with the Court’s  
28 Scheduling Order.

1           6.2   Meet and Confer. The Challenging Party shall initiate the dispute  
2 resolution process under Local Rule 37.1 et seq.

3           6.3   The burden of persuasion in any such challenge proceeding shall be  
4 on the Designating Party. Frivolous challenges, and those made for an improper  
5 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
6 parties) may expose the Challenging Party to sanctions. Unless the Designating  
7 Party has waived or withdrawn the confidentiality designation, all parties shall  
8 continue to afford the material in question the level of protection to which it is  
9 entitled under the Producing Party's designation until the Court rules on the  
10 challenge.

## 11 12 13   7.    ACCESS TO AND USE OF PROTECTED MATERIAL

14           7.1   Basic Principles. A Receiving Party may use Protected Material that  
15 is disclosed or produced by another Party or by a Non-Party in connection with  
16 this Action only for prosecuting, defending, or attempting to settle this Action.  
17 Such Protected Material may be disclosed only to the categories of persons and  
18 under the conditions described in this Order. When the Action has been  
19 terminated, a Receiving Party must comply with the provisions of section 13  
20 below (FINAL DISPOSITION).

21           Protected Material must be stored and maintained by a Receiving Party at a  
22 location and in a secure manner that ensures that access is limited to the persons  
23 authorized under this Order.

24           7.2   Disclosure of "CONFIDENTIAL" Information or Items. Unless  
25 otherwise ordered by the court or permitted in writing by the Designating Party, a  
26 Receiving Party may disclose any information or item designated  
27 "CONFIDENTIAL" only to:  
28



1 (a) the Receiving Party's Outside Counsel of Record in this Action, as  
2 well as employees of said Outside Counsel of Record to whom it is reasonably  
3 necessary to disclose the information for this Action;

4 (b) the officers, directors, and employees (including House Counsel)  
5 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom  
7 disclosure is reasonably necessary for this Action and who have signed the  
8 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

11 (f) professional jury or trial consultants, mock jurors, and Professional  
12 Vendors to whom disclosure is reasonably necessary for this Action and who have  
13 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (g) the author or recipient of a document containing the information or  
15 a custodian or other person who otherwise possessed or knew the information;

16 (h) during their depositions, witnesses, and attorneys for witnesses, in  
17 the Action to whom disclosure is reasonably necessary provided: (1) the deposing  
18 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)  
19 they will not be permitted to keep any confidential information unless they sign  
20 the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise  
21 agreed by the Designating Party or ordered by the court. Pages of transcribed  
22 deposition testimony or exhibits to depositions that reveal Protected Material may  
23 be separately bound by the court reporter and may not be disclosed to anyone  
24 except as permitted under this Stipulated Protective Order; and

25 (i) any mediator or settlement officer, and their supporting personnel,  
26 mutually agreed upon by any of the parties engaged in settlement discussions.

1     8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
 2     IN OTHER LITIGATION

3             If a Party is served with a subpoena or a court order issued in other  
 4     litigation that compels disclosure of any information or items designated in this  
 5     Action as “CONFIDENTIAL,” that Party must:

6             (a)   promptly notify in writing the Designating Party. Such notification  
 7     shall include a copy of the subpoena or court order;

8             (b)   promptly notify in writing the party who caused the subpoena or  
 9     order to issue in the other litigation that some or all of the material covered by the  
 10    subpoena or order is subject to this Protective Order. Such notification shall  
 11   include a copy of this Stipulated Protective Order; and

12            (c)   cooperate with respect to all reasonable procedures sought to be  
 13   pursued by the Designating Party whose Protected Material may be affected. If the  
 14   Designating Party timely seeks a protective order, the Party served with the  
 15   subpoena or court order shall not produce any information designated in this  
 16   action as “CONFIDENTIAL” before a determination by the court from which the  
 17   subpoena or order issued, unless the Party has obtained the Designating Party’s  
 18   permission. The Designating Party shall bear the burden and expense of seeking  
 19   protection in that court of its confidential material and nothing in these provisions  
 20   should be construed as authorizing or encouraging a Receiving Party in this Action  
 21   to disobey a lawful directive from another court.

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 24    9.     A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
 25    PRODUCED IN THIS LITIGATION

26            (a)   The terms of this Order are applicable to information produced by a  
 27   Non-Party in this Action and designated as “CONFIDENTIAL.” Such information  
 28   produced by Non-Parties in connection with this litigation is protected by the

1 remedies and relief provided by this Order. Nothing in these provisions should be  
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to  
4 produce a Non-Party's confidential information in its possession, and the Party is  
5 subject to an agreement with the Non-Party not to produce the Non-Party's  
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-  
8 Party that some or all of the information requested is subject to a confidentiality  
9 agreement with a Non-Party;

10  
11 (2) promptly provide the Non-Party with a copy of the Stipulated  
12 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
13 specific description of the information requested; and

14 (3) make the information requested available for inspection by the  
15 Non-Party, if requested.

16 (c) If the Non-Party fails to seek a protective order from this court  
17 within 14 days of receiving the notice and accompanying information, the  
18 Receiving Party may produce the Non-Party's confidential information responsive  
19 to the discovery request. If the Non-Party timely seeks a protective order, the  
20 Receiving Party shall not produce any information in its possession or control that  
21 is subject to the confidentiality agreement with the Non-Party before a  
22 determination by the court. Absent a court order to the contrary, the Non-Party  
23 shall bear the burden and expense of seeking protection in this court of its  
24 Protected Material.

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27 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL  
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1           If a Receiving Party learns that, by inadvertence or otherwise, it has  
 2 disclosed Protected Material to any person or in any circumstance not authorized  
 3 under this Stipulated Protective Order, the Receiving Party must immediately (a)  
 4 notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
 5 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
 6 the person or persons to whom unauthorized disclosures were made of all the  
 7 terms of this Order, and (d) request such person or persons to execute the  
 8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
 9 A.

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 11       11.   INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
 12 PROTECTED MATERIAL

13           When a Producing Party gives notice to Receiving Parties that certain  
 14 inadvertently produced material is subject to a claim of privilege or other  
 15 protection, the obligations of the Receiving Parties are those set forth in Federal  
 16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
 17 whatever procedure may be established in an e-discovery order that provides for  
 18 production without prior privilege review. Pursuant to Federal Rule of Evidence  
 19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
 20 of a communication or information covered by the attorney-client privilege or  
 21 work product protection, the parties may incorporate their agreement in the  
 22 stipulated protective order submitted to the court.

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 25       12.   MISCELLANEOUS

26           12.1 Right to Further Relief. Nothing in this Order abridges the right of  
 27 any person to seek its modification by the Court in the future.  
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1           12.2 Right to Assert Other Objections. By stipulating to the entry of this  
 2 Protective Order no Party waives any right it otherwise would have to object to  
 3 disclosing or producing any information or item on any ground not addressed in  
 4 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
 5 any ground to use in evidence of any of the material covered by this Protective  
 6 Order.

7           12.3 Filing Protected Material. A Party that seeks to file under seal any  
 8 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
 9 may only be filed under seal pursuant to a court order authorizing the sealing of  
 10 the specific Protected Material at issue. If a Party's request to file Protected  
 11 Material under seal is denied by the court, then the Receiving Party may file the  
 12 information in the public record unless otherwise instructed by the court.  
 13  
 14

### 15   13. FINAL DISPOSITION

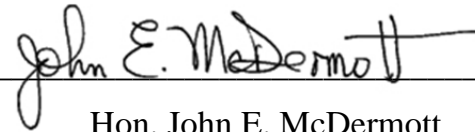
16           After the final disposition of this Action, as defined in paragraph 4, within  
 17 60 days of a written request by the Designating Party, each Receiving Party must  
 18 return all Protected Material to the Producing Party or destroy such material. As  
 19 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
 20 compilations, summaries, and any other format reproducing or capturing any of  
 21 the Protected Material. Whether the Protected Material is returned or destroyed,  
 22 the Receiving Party must submit a written certification to the Producing Party  
 23 (and, if not the same person or entity, to the Designating Party) by the 60 day  
 24 deadline that (1) identifies

25 (by category, where appropriate) all the Protected Material that was returned or  
 26 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
 27 abstracts, compilations, summaries or any other format reproducing or capturing  
 28 any of the Protected Material. Notwithstanding this provision, Counsel are entitled

1 to retain an archival copy of all pleadings, motion papers, trial, deposition, and  
2 hearing transcripts, legal memoranda, correspondence, deposition and trial  
3 exhibits, expert reports, attorney work product, and consultant and expert work  
4 product, even if such materials contain Protected Material. Any such archival  
5 copies that contain or constitute Protected Material remain subject to this  
6 Protective Order as set forth in Section 4 (DURATION).

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8 14. Any violation of this Order may be punished by any and all appropriate  
9 measures including, without limitation, contempt proceedings and/or monetary  
10 sanctions.

11  
12 DATED: 8/20/2015

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Hon. John E. McDermott

15 United States District Judge  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name],  
 of \_\_\_\_\_ [print or type full address], declare under  
 penalty of perjury that I have read in its entirety and understand the Stipulated  
 Protective Order that was issued by the United States District Court for the Central  
 District of California on \_\_\_\_\_ in the case of Espinoza v. Hennessey's Tavern,  
 Inc. dba HT Grill, Case No.: 2:15-cv-00332-CAS-JEM. I agree to comply with  
 and to be bound by all the terms of this Stipulated Protective Order and I  
 understand and acknowledge that failure to so comply could expose me to  
 sanctions and punishment in the nature of contempt. I solemnly promise that I will  
 not disclose in any manner any information or item that is subject to this  
 Stipulated Protective Order to any person or entity except in strict compliance with  
 the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
 the Central District of California for the purpose of enforcing the terms of this  
 Stipulated Protective Order, even if such enforcement proceedings occur after  
 termination of this action. I hereby appoint \_\_\_\_\_ [print  
 or type full name] of \_\_\_\_\_ [print or  
 type full address and telephone number] as my California agent for service of  
 process in connection with this action or any proceedings related to enforcement  
 of this Stipulated Protective Order.

Date: \_\_\_\_\_

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City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_